<center>**REMARKS**</center>

In the Office Action dated January 18, 2007, claims 15-32 were presented for examination. Claims 15-32 2 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claims 15, 21, and 27 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 15-32 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 15-32 were rejected under 35 U.S.C. §102(a) as being anticipated by Applicant's Admitted Prior Art (AAPA).

The following remarks are provided in support of the pending claims and responsive to the Office Action of January 18, 2007 for the pending application.

I.   Rejection Under 35 U.S.C. §101

In the Office Action dated January 18, 2007, the Examiner assigned to the application rejected claims 15-32 under 35 U.S.C. §101, as being directed to non-statutory subject matter. More specifically, the Examiner indicated that "independent claims 15, 21 and 27 do not involve transformation of article or physical object to a different state or thing, they merely recite processing data items."[1] Applicant has amended each of claims 15, 21, and 27 to recite that the compiled single output stream is stored on a computer readable medium. "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized."[2] The amendment presented herein does not add any new subject matter. Accordingly, Applicant respectfully requests that the Examiner remove the objection.

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[1]See Office Action dated January 18, 2007, Page 2.

[2] Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility, Annex IV Computer-Related Non-Statutory Subject Matter, page 50.

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II.   Rejection of Claims 1 under 35 U.S.C. §112, first paragraph

In the Office Action dated January 18, 2007, the Examiner assigned to the application rejected claims 15, 21, and 27 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

More specifically, the Examiner has raised an issue with the phrase "creating a binary tree". As shown in the specification, Figs. 5A - 5L are tree diagrams used to demonstrate the selection replacement algorithm as claimed by Applicant. With respect to the term "hierarchical manner", this is described in the specification on pages 8-13 in the manner in which the tree traversal is described in detail. Similarly, with respect to the phrase "resolving comparison of duplicate identifiers . . . ", this is described in the specification on page 4 under the subtitle "Overview". Finally, the phrase "compiling a single output. . . " was present in the prior version of the claims and is not new language amended to the claims 15-27. If there is an issue of indefiniteness with respect to the phrase "compiling a single output . . .", this should have been raised in the prior Office Action, or in the present Office Action without placing the application into a Final status since this clause was presented in the claims in a prior communication and was not rejected by the Examiner. Accordingly, it is Applicant's position that the items identified as being indefinite are not indefinite and as such this rejection should be removed, and that the rejection of the phrase "compiling . . . " is not indefinite, and that if the Examiner believe it is indefinite then the Final status should be removed as this issue should have been raised earlier with an opportunity for the Applicant to properly respond prior to placement of the application in a Final status.

III.   Rejection of claims 15-32 under 35 U.S.C. §112, second paragraph

In the Office Action dated January 18, 2007, the Examiner assigned to the application rejected claims 15-32 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Regarding the term "hierarchy" and "hierarchical manner," the structure of each of claims 15, 21, and 27 defines these terms so that they are not indefinite. More specifically, as seen in claims 15, 21, and 27, this clause of the claim includes a subclause "including . . ." that defines the manner in which data items are promoted through the hierarchical structure of a binary tree. Accordingly, it is Applicant's position that this term is clearly defined in the claim and is not indefinite.

Regarding the indefiniteness of the sub-clause "if said status identifiers are unequal", Applicant respectfully disagrees with the Examiner. The clause which contains this subclause positively recites the assignment of a first status identifier to a first node and a second status identifier to a second node, and the comparison of the identifiers. The term "unequal" means if the identifiers do not match. Applicant has not claimed a comparison of the other identifiers described in the Specification as these comparisons are matters of prior art and not a part of the invention herein. Applicant is merely claiming those elements which they believe are novel. As such, the claimed are directed to the subject matter of the invention which Applicant believes are novel and entitled to issuance of a patent. Accordingly, Applicant respectfully requests that the Examiner remove this rejection.

Regarding the indefiniteness of the segment "compiling," Applicant has amended the segment to more clearly define how the compilation is taking place and where the compiled output stream is available. No new subject matter has been added by this amendment. Furthermore, it is Applicant's position that the amendment does not necessitate a new search. Accordingly, Applicant respectfully requests that the Examiner remove this rejection.

Regarding the phrase "identification process," Applicant had this language in the prior version of the claim, and the Examiner did not raise an indefinite issue at that time. However, to remove the issue raised herein, Applicant has amended the claim to remove this phrase. Accordingly, Applicant respectfully requests that the Examiner remove this rejection.

Regarding the limitation of the clause "remembering . . .", Applicant is claiming that it is the first data item in a first of the nodes was a duplicate data item. There are three steps in the "resolving" clause that should be read together to clarify which data is remembered and how it is used. Accordingly, it is Applicant's position that this clause is not indefinite and respectfully requests that the Examiner remove this rejection.

Regarding claims 18, 24, and 30, Applicant has amended the term "dine" to "done". As is apparent, this was a typographical error. Accordingly, Applicant respectfully requests entry of the amendment.

Based upon the amendments to claims 15, 21, and 27, it is Applicant's position any issues of indefiniteness have been removed. Accordingly, Applicants respectfully request removal of the rejection of claims 15-32 under 35 U.S.C. §112, second paragraph, and respectfully requests that the Examiner direct allowance thereof.

IV. Rejection of claims 15-32 under 35 U.S.C. §102(b)

In the Office Action dated January 18, 2007, the Examiner assigned to the application rejected claims 15-32 under 35 U.S.C. §102(b) as being anticipated by Applicant's Admitted Prior Art *(AAPA)*.

The remarks pertaining to *AAPA* provided in the response to the prior Office Actions are hereby incorporated by reference.

In the Office Action dated January 18, 2007, the Examiner rejects the pending claims over *AAPA* and then proceeds to apply the *Smith* reference. It appears that the Examiner may have inserted a typographical error. However, due to the condition of the written Office Action, it is unclear whether the rejection is anticipation in view of *AAPA* or *Smith*.

Furthermore, with respect to the Examiner's Response to Arguments addressing a prior communication, the Examiner stated that the current condition of the claims does not recite an odd number of input streams. Applicant respectfully disagrees. See claim 15, lines 4-5 and lines 6-7, claim 21, lines 4, 6, and 7, and claim 27, lines 7, 9, and 10. Furthermore, Applicant respectfully disagrees with the Examiner's statement that *AAPA* meets all of the claimed limitations. More specifically, The Examiner states that the *AAPA* teaches all of the elements in the "resolving" clause. Applicant respectfully disagrees. The *AAPA* does not teach the concept of remembering duplicate data items in the manner claimed by Applicant. Rather, the *AAPA* teaches the elements used to promote a data item, which requires a key comparison. See page 1, paragraph 6, lines 5-6. With respect to the process for promoting data items, the *AAPA* does not teach the concept of switching data streams in the manner claimed by Applicant. One of the limitations of the prior art is the fact that it does not evenly consume the input streams. Applicant has resolved this limitation in the manner in which data items are promoted in the hierarchy.

Furthermore, the Examiner appears to use Fig. 5A as teaching some of the claimed limitations of Applicant. However, Fig. 5A is not designated as a prior art figures. In fact, there are no prior art figures in the application. See page 4 lines 18-23. Any mention of a binary tree of Fig. 5A pertains to Applicant's invention and not to the prior art.

Accordingly, Applicant respectfully requests that the Examiner remove the rejection of claims 15-32.

V. Conclusion

Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. Accordingly, Applicant requests that the Examiner indicate allowability of claims 15-32, and that the application pass to issue. If the Examiner believes, for any reason, that personal communication

will expedite prosecution of the application, the Examiner is hereby invited to telephone the undersigned at the number provided.

Respectfully submitted,

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Date: March 19, 2007